



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 5822566

Date: DEC. 3, 2019

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner seeks second preference immigrant classification as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not qualify for classification as an individual of exceptional ability, and that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

The Petitioner appealed the matter to us, and we dismissed the appeal.¹ The matter is now before us on motion to reconsider. With the motion, the Petitioner submits a statement arguing that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the motion.

I. LAW

A motion to reconsider is based on an incorrect application of law or policy. The requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3).

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

¹ *See Matter of R-D-S-E*, ID# 2360141 (AAO Mar. 12, 2019).

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).² *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion³, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.⁴

II. ANALYSIS

In our prior decision, we determined that the Petitioner qualifies for classification as an individual of exceptional ability, but that he had not established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. Specifically, we concluded that he had not sufficiently demonstrated the national importance of his proposed endeavor and therefore he did not meet the first prong of the *Dhanasar* analytical framework.

Throughout these proceedings, the Petitioner has characterized his proposed endeavor as coordinating a school for bodyboarding and environmental awareness. For example, at the time of filing, the Petitioner asserted that he intends to work “as the Director and Founder of a school that combines the teaching of ocean sports with the teaching of ocean ecology and environmental sustainability.”⁵ In

² In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

³ See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

⁴ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁵ Part 6 of his Form I-140, Immigrant Petition for Alien Worker, identified his proposed employment as “Director of a proposed school for body-boarding and environmental studies.”

addition, he offered a project plan indicating that he seeks to establish an “Environmental School of Bodyboarding” (a.k.a. [redacted] School of Bodyboarding) in [redacted] Hawaii. He stated that this undertaking involves developing “an educational program through the practice of bodyboarding, helping people learn more about our environment and sport.”

In response to the Director’s request for evidence, the Petitioner again referenced his “work with the Environmental School of Bodyboarding” as his proposed endeavor. He discussed his “vision of combining ocean sports with environmental education” and indicated that “there is an unmet need for this type of endeavor.” The Petitioner further contended that “[t]eaching young people how to protect the environment is work of national importance.”

On appeal, the Petitioner provided a personal statement asserting that his plan involves “a unique methodology that can be used to recover beaches and other natural environments that are degraded” and that this methodology “uses local people to solve local problems and begins with teaching children and young adults concepts of sustainability in the context of ocean sports (in this case, bodyboarding).” He claimed that his “methodology is unique in that it begins in the environment and with children, training them as athletes who care for the environment and teach others the same.” He further indicated that he commenced the project in Hawaii with the “hope to replicate the model in other coastal areas of the U.S.” The Petitioner also stated that he seeks “to create jobs and provide a program that will benefit young people here and the environment just as it has in Brazil.”

Our appellate decision concluded that the Petitioner had not “presented sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance.” We explained that the Petitioner had not shown his proposed endeavor “stands to sufficiently extend beyond his school and its participants to impact the field more broadly than his specific programs.”

On motion, the Petitioner offers a personal statement in which he attempts to re-characterize his proposed endeavor:

While I appreciate the [AAO’s] effort in reviewing my submitted documents, I see . . . that I was not able to clearly explain my project. When the [AAO] states that I wish to be a “coordinator of a school for bodyboarding and environmental awareness” and that the Petitioner “intends to work as the director and founder of a school that combines the teaching of ocean sports with the teaching of ocean ecology and environmental sustainability,” I see that I was not successful in explaining what I do and what my plans are.

That is not my proposed endeavor, I am an environmental engineer I want to emphasize that that the work I do in Brazil and hope to do here is of Coastal Restoration and Conservation, most specifically the Recovery of Coastal Dunes as an Environmental Engineer

In *Dhanasar*, we held that a petitioner must identify “the specific endeavor that the foreign national proposes to undertake.” *Id.* at 889. Here, the Petitioner acknowledges on motion that he previously did not clearly explain his proposed endeavor. He does not contest our findings relating to any specific

documentation or offer further arguments demonstrating that our analysis under *Dhanasar*'s first prong was in error. The Petitioner instead asks that we reconsider his proposed endeavor as an environmental engineer whose work is aimed at coastal restoration and conservation. A petitioner may not make material changes to his petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). Regardless, the Petitioner has not shown his proposed endeavor stands to sufficiently extend beyond his environmental engineering projects to impact the field more broadly than his specific coastal restoration and conservation programs.

The Petitioner has not met the requirements for a motion to reconsider as he has not shown that we erred in our previous analysis based on the record before us on appeal. Further, the motion to reconsider does not establish that our previous findings were based on an incorrect application of the law, regulation, or USCIS policy. Accordingly, the Petitioner has not demonstrated that his proposed work meets the "national importance" element of the first prong of the *Dhanasar* framework.⁶

III. CONCLUSION

The Petitioner's motion does not establish that our prior decision was based on an incorrect application of law or policy. As the Petitioner has not met the first prong set forth in the *Dhanasar* analytical framework, we find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The motion to reconsider is dismissed.

⁶ Similarly, in *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.